

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(SUMBAWANGA DISTRICT REGISTRY)**

**AT SUMBAWANGA**

**RM. CRIMINAL APPEAL NO. 58 OF 2022**

*(Originating from Resident Magistrate's Court of Katavi in Economic Case No. 32 of 2018)*

**GUYELA LUHAWI..... 1<sup>ST</sup> APPELLANT**

**MICHEAL MUSSA..... 2<sup>ND</sup> APPELLANT**

**VERSUS**

**THE REPUBLIC..... RESPONDENT**

**JUDGMENT**

*13/03/2023 & 28/04/2023*

**MWENEMPAZI, J.:**

The appellants herein were arraigned before the Resident Magistrates' court of Katavi (Trial Court) for the offence of Unlawful Possession of Government Trophies contrary to Section 86 (1) and (2) (c) (ii) of the Wildlife Conservation Act No. 52 of 2009, read together with Para 14 of the first schedule to, and Section 57 (i) and 60 (2) of the Economic and Organized Crime Control Act (Cap 200 R. E. 2002) as Amended by Section 16 (a) and 13 (b) of the Written Laws (Miscellaneous Amendments) Act No. 03 of 2016.

The story behind their arraignment was that on the 20<sup>th</sup> day of

November 2018, at about 09:20 hours at Chilangwa area within Katavi National Park in Mlele District found within Katavi Regio, the appellants herein were jointly apprehended in unlawful possession of Government Trophies to wit 24.6 Kilograms of giraffe meat (rear leg) and skin which was valued at USD 15,000/= being equivalent to Tshs. 34,497,000/=, the property of the government of the United Republic of Tanzania without permits from the Director of Wildlife.

These charges were read before the appellants and in turns they both denied the charges against them, and a full trial was inevitable in which at the end of it, they were both found guilty of the offence they were charged with and thus sentenced to serve the term of twenty years imprisonment each.

The appellants were aggrieved by the decision of the trial court and jointly decided to file a petition of appeal to this court which consisted of five grounds as extracted here under;

1. That, the trial court misdirected itself by holding that the Appellants were found with the trophies following search while in actual fact no search was done, the appellants were framed for the offence they did not commit.
2. That, the trial court misdirected itself by believing the story that the Appellants lead the arresting party to the place where the

killing took place and left one Charles Kasula without summoning him to corroborate their story.

3. That, the trial court erred at law by admitting the certificate of seizure which was procured by threat and intimidation and contrary to law as no warrant of search or receipt were produced in accordance with the law.
4. That, the trial court erred at law admitting the Exhibit PE2 and PE3 which were produced PW4 one Marwa who did not seize it nor draw the same.
5. That, the trial court erred at law by convicting the Appellant with an offence which was not proved beyond reasonable doubt.

During the hearing of this appeal as scheduled, the appellants had no legal representation, and so they fended for themselves meanwhile the respondent, Republic was represented by Ms. Safi Kashindi, learned State Attorney.

The appellants were the first to submit for their grounds of appeal whereas they jointly stated that they do not have any further clarification but they only pray for this Court to consider their grounds of appeal and proceed to allow this appeal.

In response, MS. Kashindi submitted that she prays to respond to the ground and the 1<sup>st</sup> and 2<sup>nd</sup> grounds together. She proceeded and submitted

that, in the evidence tendered by the prosecution, the 1<sup>st</sup> witness (PW1) testified how they were conducting a patrol and met with the appellants with buckets. She submitted further that, it was the appellants who said that the person who had a gun was Charles Kasula and the appellants did lead the Wildlife officers to the place where they had killed a giraffe.

Ms. Kashindi added that, in respect of the said Charles Kasula, he is one of the suspects being searched for by the Wildlife officers whereas according to PW1's testimony is that they could not find him even at the time the case was being heard, and in those circumstances, the appellants were arraigned alone as they were found in possession of the giraffe meat. She then added that the trial court did convict the appellants correctly after assessing the evidence and found it to be concrete. Ms. Kashindi then referred this court to the case of **Goodluck Kyando vs Republic [2006] TLR 367**, where the Court held that each witness has to be believed unless there is a good cause not to believe. She then prayed for this Court to uphold the conviction and sentence of the trial court.

Ms. Kashindi then proceeded to submit against the 3<sup>rd</sup> ground of appeal which is challenging the certificate of seizure, whereas the appellants claim that there was no search warrant and that there was no receipt issued after seizure. She submitted that, this ground has no merits as there is nowhere in the evidence where it is shown that the property was seized under

intimidation. She added that, even when PW1 (one of the arresting officers) was testifying, still the appellants did not object to the admission of the certificate of seizure nor did they cross examine the witness on the same. Ms. Kashindi then urged this court to take a look at page 12 of the typed proceedings of the trial court, and added that in law failure to cross examine the witness is a sign that they admit to what the witness is testifying. On the issuing of a receipt, Ms. Kashindi submitted that there are various decisions where it has been held that it is not important for a receipt to be issued where there is a certificate of seizure duly signed by the accused. She then cited the case of **Gitebeka Guyaya vs Republic, Criminal Appeal No. 44/2020** Court of Appeal of Tanzania at Arusha (December, 2020) at page 14.

Coming to the 4<sup>th</sup> ground of appeal which is challenging exhibits PE2 and PE3, Ms. Kashindi submitted that on perusing the trial court's record, PW4 was G. 3334 PC Mohamed, it was not Mazwa as alleged by the appellants. She added the said exhibits were tendered during plea taking and at the hearing by PW1 respectively. In that, she believes that this ground of appeal has no merits as the appellants did not direct themselves properly during the preparations of drafting the grounds of appeal.

In the last ground of appeal which challenges the whole case against the appellants that it was not proved beyond reasonable doubts. Ms. Kashindi

submitted that, in criminal cases the duty of the accused is to raise doubts to the prosecution case. She proceeded that, going through the proceedings of the trial court, nowhere is it shown that the appellants had succeeded to cast doubts to the prosecution's evidence, as they even failed to challenge the admission of their caution statements. She insisted that, her side is of the opinion that the case was proved beyond any reasonable doubts and that she prays for this court to uphold the decision of the trial court and dismiss this appeal.

In rejoinder, the appellants insisted that they pray for this court to consider their appeal as they have been struggling since 2018 and therefore, they pray this appeal be allowed and they be set free and go back to take care of their families.

After I had thoroughly gone through the entire trial court's records, the grounds of appeal to this court and the submissions made by both camps, I am of the firm view that the determinant issue in disposing of this appeal is ***whether this appeal has merits*** being in this court.

As this court is the first appellate court, it is entitled to re-evaluate the evidence and draw its own inferences of fact or conclusions subject to the usual deference to the trial court's findings based on credibility of witnesses - See **D.R. Pandya vs Republic [1957] E.A 336** and **Juma Kilimo vs Republic, Criminal Appeal No. 70 of 2012** (unreported).

And therefore, in dealing with the issue raised above, I will respond to the grounds of appeal as raised by the appellants in their joint petition of appeal, whereby I will deal with the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> grounds together and later on finish up with the 5<sup>th</sup> ground alone.

In the trial court's records PW1 testified that on the fateful date, he and his colleagues were patrolling the Katavi National Park as part of their responsibility, and at around 09:00 hours, they saw two people of which one was carrying a bucket and the other was carrying a sulphate bag, the officers apprehended them and in doing so, PW1 and his colleagues inquired the suspects if they had permits of being within the National Park during the particular hours, and the suspects replied that they had no permits and that they had unlawfully entered the park for the purpose of hunting whereas, they were found in possession of a giraffe meat and skin, an axe, a knife and a machete. PW1 testified that, the suspects led them to where the carcass of the giraffe was. PW1 seized all the items he found in possession of the suspects and filled a seizure certificate in which he tendered it in court as exhibit without any objection from the appellants and the trial court did admit it in evidence as **Exhibit P3**.

PW1's testimony was corroborated by the testimony of PW2 who is also a Wildlife officer who was present on that fateful date and witnessed the seizure of the items found in possession of the appellants. PW2 also signed

the Exhibit P3 as a witness.

In addition to that, the caution statements of the two appellants which were tendered in court as evidence by PW3 and PW4 and the court admitted them in evidence by marking them as **Exhibit P6** and **Exhibit P7** for the 1<sup>st</sup> and the 2<sup>nd</sup> appellant respectively, corroborated the testimonies of PW1 and PW2. In these statements as they were loudly read in court, the records reveal that the appellants never objected their admission in evidence. As the contents were read, the appellants did confess that they indeed killed a giraffe by the aid of another person known as Charles Kasula (who is at large) and they did lead the officers to the place where they had hidden the carcass of the giraffe.

I therefore join hands with Ms. Kashindi in this that, from the 1<sup>st</sup> ground to the 4<sup>th</sup> ground of appeal, they all lack merits. As well revealed in evidence, that PW1 was on patrol as a usual routine and encountered the appellants at the area where they were not supposed to be without a permit and the contents of their confession, they did admit to have committed the offence. Under these circumstances, the procedure deployed by PW1 was correct, meaning as he arrested the suspects and seized the properties he found with them, he filled a seizure certificate and the suspects dully signed it plus the witnesses present at the particular time.

As rightly submitted by the learned State Attorney that there is no



dispute that PW1 did not issue a receipt following seizure but in view of the fact that the appellants counter-signed the certificate of seizure containing the list of items seized from them, and it was not objected by the them during its admission in evidence, it was sufficient to ground conviction considering the corroborative evidence adduced by the prosecution witnesses and that none issuing of the receipt was not fatal.

This was the stand of the Court of Appeal in the case of **Abdallah Said Mwingereza vs Republic, Criminal Appeal No. 258 of 2013** (unreported) in which it held that:

*"It may be observed however that normally under section 38(3) of the Criminal Procedure Act seizure receipts are issued following issue of search warrants. But even if the seizure certificate were to be ignored still there was sufficient evidence from PW1 and PW2 which proved that the appellant was found with the pistol and seven rounds of ammunition."*

Furthermore, the claims by the appellants that they were intimidated by the arresting officers which made them to sign the certificate of seizure and later on to record the caution statements at the police station, to me these are mere after thoughts. If one peruses the trial courts proceedings, it would be noted that, the appellants freely signed the seizure certificate and at their own will, did agree to record their caution statement and that is why

they never objected the admission of any of the documents during trial. And therefore, I am convinced that grounds 1, 2, 3 and 4 are meritless and I proceed to dismiss them.

As for the 5<sup>th</sup> ground of appeal, my entire analysis above openly reveal that the prosecution side did succeed to prove their case against the appellants. The records show that, the appellants were apprehended at the National Park a place where themselves admitted to be unlawfully. They were readily caught possessing giraffe's meat and skin and this fact was testified by PW1 and PW2, and their testimonies were corroborated by the caution statements which were freely recorded by the appellants themselves.

It is trait law that in criminal law the guilt of the accused is never gauged on the weakness of his defence, rather conviction shall be based on the strength of the prosecution's case. See **Christina Kale & Another vs Republic, [1992] TLR 302** and **Marwa Wangiti Mwita & Another vs Republic, [2002] TLR 39**. I therefore dismiss this 5<sup>th</sup> ground of appeal, for it also lacks merits.

Given the above exposition, I conclude that this appeal lacks merit in its entirety. Consequently, I uphold the appellants' conviction and the sentence imposed on them. The appeal stands dismissed.

It is so ordered.

Dated at Sumbawanga this 27<sup>th</sup> day of April, 2023.



  
**T. M. MWENEMPAZI**  
**JUDGE**

ORIGINAL